

### **REMARKS**

The present Amendment and Response is fully responsive to the Non-Final Office Action dated December 31, 2007. Claims 1-53 remain pending. By this Amendment, independent Claims 1, 13, 28, and 41 have been amended. The Applicants respectfully submit that no new matter has been added by the foregoing amendments. Reconsideration of the application is requested in view of the following remarks.

### **Double Patenting Rejection**

In the Non-Final Office Action, Claims 1-53 were provisionally rejected under the judicially created doctrine for nonstatutory obviousness-type double patenting. Specifically, the Office Action contends that at least one of the currently pending claims is not patentably distinct from the claims of co-pending U.S. Pat. App. No. 11/671,000.

In response, the Applicants have submitted a terminal disclaimer in conjunction with the present Amendment and Response to overcome the nonstatutory obviousness-type double patenting rejection.

### **Claim Rejections under 35 U.S.C. §§ 102 and 103**

In the Non-Final Office Action, Claims 1-9, 13-15, 17-19, 22-37, and 41-50 were rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 5,679,940 to Templeton et al. (hereinafter "Templeton"). Additionally, Claims 10-12, 16, 20, 21, 38-40, and 51-53 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Templeton in view of U.S. Pat. Publication No. 2002/0088849 to Nichols et al. (hereinafter "Nichols").

In response, the Applicants have amended independent Claims 1, 13, 28, and 41 to clarify the scope of the claimed invention of Claims 1, 13, 28, and 41. Specifically, independent Claim 1 has been amended to include a risk assessment engine that "obtains additional merchant parameters, including the merchant's transaction history with the customer, and further obtains additional information from the merchant at the point of sale device such that, when the additional merchant parameters and the additional information are obtained, the risk assessment

engine re-evaluates the transmitted transaction information along with the identification information to further determine whether to accept or decline the proffered payment” (underlining supplied). Independent Claims 13, 28, and 41 have been amended in a similar manner. Support for these amendments is provided at least in paragraphs [0048] and [0062] of the Specification and also in Figure 4 at block 234.

In marked contrast to the claimed invention, neither Templeton nor Nichols disclose, teach, or suggest the concept of a system or method for assessing risk in financial transaction where the risk assessment engine re-evaluates a transaction using, at least in part, additional merchant parameters, including the merchant’s transaction history with the customer, and additional identification information obtained from the merchant. More specifically, while Templeton does relate to a system that obtains additional information from the merchant location about the customer when a particular transaction indicates a certain level of risk, there is no indication in Templeton of obtaining not only the additional information with respect to the customer, but also additional information about the particular merchant that is utilized to ascertain the risk of a proffered payment. Moreover, the Nichols reference also fails to teach or suggest this feature.

As a result of obtaining both the merchant information and the additional information about the customer, financial transactions, such as proffered payments that are somewhat risky, but not too risky to decline outright, can be further evaluated with greater accuracy. The greater accuracy stems not only from the additional information about the customer, but also the additional information about the merchant. More particularly, the greater accuracy stems from information relating to the merchant’s dealings with the customer. For at least these reasons, the Applicants respectfully assert that amended independent Claims 1, 13, 28, and 41 are allowable over Templeton and Nichols, either taken alone or in combination. Therefore, the Applicants respectfully contend that the amended independent claims are in condition for allowance.

Additionally, the Applicants respectfully submit that dependent Claims 2-12, 14-27, 29-40 and 42-53 are allowable as a matter of law as depending from an allowable base claim, notwithstanding their independent recitation of patentable features. Accordingly, the Applicants

respectfully assert that the pending claims of the application are in condition for allowance and requests the prompt allowance of the same.

**CONCLUSION**

The Applicants believe that each matter raised by the Office Action has been responded to. Allowance of the claims is respectfully solicited. It is not believed that extensions of time or fees for addition of claims are required in this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 19-5029.

If there are any issues which can be resolved by teleconference or an Examiner's Amendment, the Examiner is invited to call the undersigned attorney.

Respectfully submitted,



---

Rhett S. White  
Reg. No. 59,158

Date: **March 24, 2008**  
SUTHERLAND ASBILL & BRENNAN LLP  
999 Peachtree Street, NE  
Atlanta, Georgia 30309-3996  
Telephone: (404) 853-8037  
Facsimile: (404) 853-8806

Attorney Docket No.: **34250-0838**